IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 108 OF 2006

Mrs.Meena Judith Pinto e
Tavora alias Mrs.Judy Tavora,
Altinho, Panaji, Goa. ... Petitioner

V/s.

1. Mr.Deepak Madholkar.

2. Colonel Arjun Deva. ... Respondents.

Mr. Anthony D'silva for the petitioner.

Mr. K.L.Menhdiratta for respondent No.2.

CORAM : V.C.DAGA, J.

DATED : 9th August 2006.

P.C. :

Leave to delete respondent No.4 as prayed.

Heard learned counsel for the rival parties.

Perused petition.

Rule, returnable forthwith.

By consent of parties petition is taken up for final hearing and disposal.

3. This petition is directed against the order dated 1st December, 2005 passed by the Civil Judge, Junior Division, Mapusa in Regular Civil Suit No.60/2005/F; whereby the application raising objection for taking written statement of defendant No.2 on record came to be rejected and the written statement came to be taken on record.

Facts :

4. The factual matrix reveals that the suit was filed sometime in the month of April, 2005, where as the written statement was filed by defendant No.2 sometime in the month of December, 2005. It was taken on record without there being any application either for condonation of delay or prayer for allowing defendant No.2 explaining cause for delayed filing of written statement.

5. It appears from the record that vide application dated 1st December, 2005 the plaintiff had

put her objection on record to take the written statement of defendant No.2 on record.

6. The trial Court without considering the objections raised and without recording any reasons in support of its order allowed to take the written statement of defendant No.2 on record. This order is a subject matter of challenge in this petition filed under Article 227 of the constitution of India.

7. The learned counsel appearing for the petitioner/ original plaintiff relying on the Apex Court judgment in the case of ***Kailash v. Nanhku***, AIR 2005 SC 2441 submits that the prayer for extension of time can only be granted by the Court only upon its due satisfaction that too for the reasons recorded in writing in support of its satisfaction. That no such satisfaction is to be seen in the impugned order. He submits that the law laid down by the Apex Court has not been followed by the trial Court.

8. Per contra, learned counsel appearing for respondent No.2/ original defendant No.2 tried to support the impugned order contending that this is not a fit case to invoke writ jurisdiction under Article 227 of the Constitution of India. However, he could

not show compliance of the law laid down by the Apex Court.

Consideration :

9. Having heard rival parties, it is not in dispute that defendant No.2 filed written statement without there being any application for taking it on record seeking condonation of delay in filing written statement. The trial Court has taken the said written statement on record in a most casual manner with a cryptic order without recording any reasons for exercising discretion in favour of defendant No.2. In the circumstances, the impugned order cannot stand to the scrutiny of law. The same is liable to be quashed and set aside.

10. In the result, impugned order dated 1st December, 2005 is quashed and set aside. Petition is allowed. However, in the circumstances, respondent No.2/ defendant No.2 is permitted to move proper application before the trial Court justifying delay in filing written statement. In the event of such application, it would be open for the petitioner/ plaintiff to file her reply or objection to the said application. The trial Court shall hear the rival

parties and pass a reasoned order taking into account the law laid down by the Apex Court.

11. In the result, petition is allowed. Rule is made absolute in terms of this order with no order as to costs.

(V.C. DAGA, J.)

skn/-